

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONTE JAMAL MCCLELLAN,
Petitioner,

v.

RIKARD,
Respondent.

CASE NO. C24-1975-KKE-DWC

ORDER REJECTING REPORT AND
RECOMMENDATION

This matter comes before the Court on Magistrate Judge David W. Christel's Report and Recommendation to dismiss the petition without prejudice for failure to file a corrected application to proceed *in forma pauperis* ("IFP"). Dkt. No. 3. For the reasons stated below, the Court declines to adopt the Report and Recommendation.

Petitioner is incarcerated in New York and seeks to file a petition for habeas corpus in this Court. Dkt. No. 1-1. In attempting to do so, he filed his IFP application on the wrong form. Dkt. No. 1. The Clerk of Court then sent Petitioner a letter dated December 2, 2024, directing him to submit the correct application by January 2, 2025 or risk dismissal. Dkt. No. 2. No new application was received, and as such, Judge Christel rightly concluded that Petitioner's case should be dismissed without prejudice. Dkt. No. 3.

However, Petitioner then timely filed an objection averring that he never received the December 2, 2024 letter from the Clerk informing him of the deficiency in his IFP application or

1 how to cure it. Dkt. No. 4. Upon de novo review of the record, the Court finds that Petitioner
2 should be granted additional time to cure the IFP deficiency and orders as follows:

- 3 1. The Report and Recommendation is rejected. Dkt. No. 3.
- 4 2. Petitioner shall have until March 13, 2025 to submit a corrected IFP form.
- 5 3. The Clerk is instructed to mail the following to Petitioner: this order, a copy of the
6 docket, and a copy of the correct IFP form for Petitioner to complete.
- 7 4. The Clerk is directed to send copies of this order to the Honorable David W. Christel.

8 Dated this 14th day of February, 2025.

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11 Kymberly K. Evanson
12 United States District Judge
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